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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,908	10/22/2003	John Bruno	1876	6622

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EXAMINER

GELLNER, JEFFREY L

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 01/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/691,908	Applicant(s) BRUNO ET AL.	
	Examiner Jeffrey L. Gellner	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 December 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 5-8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 9-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Applicant's election of species I (Figs. 1-7) in the reply filed on 6 December 2004 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Claims 5-8 are withdrawn from prosecution. In Applicant's response to election of 6 December 2004, Applicant requested that claims 5-8 be cancelled. These claims are cancelled only when Applicant submits a new listing of all the claims with proper status of each claim in the parenthetical expression (see MPEP 714 II C).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. §102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 9, 10, 12, 13-16, 18-22, 23-25, 27, and 28 are rejected under 35 U.S.C. §102(b) as being anticipated by Clairborne (US 2,486,261).

As to Claim 1, Clairborne discloses folding support stand (Figs. 1-5) for plants comprising first and second support frames (10 of Figs. 1 and 2) with first and second legs (10 of Figs. 1 and 2), the first and second frames interconnected by a pivot axis (12 of Fig. 1), the legs interconnected by at least one beam member (lowest 14s of Fig. 1) on each support frame; at

least one first and one second trellis pieces (other two 14s of Fig. 1); and, a catch assembly (17 of Fig. 1) associated with the support frames.

As to Claim 2, Clairborne further discloses the first and second trellis pieces as slats (14 of Figs. 1 and 2).

As to Claim 9, Clairborne further discloses a plurality of trellis pieces (14 of Figs. 1 and 2).

As to Claim 10, Clairborne further discloses the catch assembly is adjustable (in that the length of wire 17 can be adjusted).

As to Claim 12, Clairborne further discloses a pair of catch assemblies (in that Clairborne uses the plural for “eyes” at col. 2 lines 17-25 to designate more than one catch assembly).

As to Claim 13, Clairborne discloses folding support stand (Figs. 1-5) for plants comprising first and second support frames (10 of Figs. 1 and 2) with first and second legs (10 of Figs. 1 and 2), each support frame with upper and lower beams (upper most and lower most 14s of Figs. 1 and 2) that are spaced-apart generally parallel and connecting the legs; at least one first and second trellis pieces disposed on the support frames (inner 14s of Figs. 1 and 2); legs interconnected by a pivot axis (12 of Fig. 1), and, a catch assembly (17 of Fig. 1) associated with the support frames.

As to Claim 14, Clairborne further discloses an axle pin (12 of Fig. 1) for pivotally connecting first and second legs.

As to Claim 15, Clairborne further discloses the lower leg sections shorter than the upper leg sections (Fig. 1).

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As to Claims 16 and 18, Clairborne further discloses first and second trellis pieces, or a plurality of trellis pieces, extending between the pair of legs (inner two 14s of Figs. 1 and 2).

As to Claim 19, Clairborne further discloses the catch assembly is adjustable (in that the length of wire 17 can be adjusted).

As to Claim 20, Clairborne further discloses the upper beams located proximately the upper end of first and second legs (Figs. 1 and 2) and wherein the lower legs extend between the upper leg sections proximately the common pivot axis (Figs. 1 and 2).

As to Claim 21, Clairborne further discloses the legs with lower ends with contact faces oriented obliquely to the respective longitudinal axis (Figs. 1 and 2).

As to Claim 22, Clairborne further discloses a pair of catch assemblies (in that Clairborne uses the plural for “eyes” at col. 2 lines 17-25 to designate more than one catch assembly).

As to Claim 23, Clairborne discloses folding support stand (Figs. 1-5) for plants comprising first and second scissor assemblies (10 of Figs. 1 and 2) with first and second legs (10 of Figs. 1 and 2), the legs secured by pivot axes (12 of Fig. 1); each leg pair with first and second beams (upper most and lower most 14s of Figs. 1 and 2) that are spaced-apart generally parallel and connecting the legs; at least one first and second trellis pieces disposed on the leg pairs (inner 14s of Figs. 1 and 2); and, a catch assembly (17 of Fig. 1) associated with the support frames.

As to Claims 24 and 25, Clairborne further discloses first and second trellis pieces, or a plurality of spaced-apart trellis pieces, extending between the pair of legs (inner two 14s of Figs. 1 and 2).

As to Claim 27, Clairborne further discloses the catch assembly is adjustable (in that the length of wire 17 can be adjusted).

As to Claim 28, Clairborne further discloses the lower leg sections shorter than the upper leg sections (Fig. 1).

Claim Rejections - 35 USC §103

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 17, and 26 are rejected under 35 U.S.C. §103(a) as being unpatentable over Clairborne (US 2,486,261) in view of White (US 334,918).

As to Claim 3, the limitations of Claim 1 are disclosed as described above. Not disclosed is a upright trellis piece between first and second trellis pieces. White, however, discloses a folding plant support with an upright trellis piece extending transversely to its first and second trellis piece (c of Fig.) It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the frame of Clairborne by adding upright trellis pieces as disclosed by White so as to add more structural strength to the support and to add more support to the plants.

As to Claim 17, the limitations of Claim 16 are disclosed as described above. Not disclosed are a plurality of first and second auxiliary trellis pieces between the upper and lower beams. White, however, discloses a folding plant support with a plurality of first and second

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auxiliary trellis pieces between the upper and lower beams (c of Fig.) It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the frame of Clairborne by adding auxiliary trellis pieces as disclosed by White so as to add more structural strength to the support and to add more support to the plants.

As to Claim 26, the limitations of Claim 25 are disclosed as described above. Not disclosed are a plurality of auxiliary trellis pieces between the first and second beams. White, however, discloses a folding plant support with a plurality of auxiliary trellis pieces between the first and second beams (c of Fig.) It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the frame of Clairborne by adding auxiliary trellis pieces as disclosed by White so as to add more structural strength to the support and to add more support to the plants.

Claim 4 is rejected under 35 U.S.C. §103(a) as being unpatentable over Clairborne (US 2,486,261) in view of White (US 334,918) in further view of Feezel (US 3,094,811).

As to Claim 4, the limitations of Claim 3 are disclosed as described above. Not disclosed are the upright trellis pieces being a fan shape. Feezel, however, disclose upright trellis pieces in a fan shape (34 of Fig. 5). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the frame of Clairborne as modified by White by having the upright trellis pieces as fan-shaped as disclosed by Feezel so as to meet consumer aesthetic tastes.

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Claim 11 is rejected under 35 U.S.C. §103(a) as being unpatentable over Clairborne (US 2,486,261).

As to claim 11, the limitations of Claim 9 are disclosed as described above. Not disclosed is the catch assembly including a hook and a chain. However, because a hook and chain and a wire and mounted eye of Clairborne were art-recognized equivalents at the time of the invention in those stands where the exact type of catch assembly is immaterial, it would have been obvious to one of ordinary skill in the art at the time of the invention to substitute a hook and chain catch assembly for the assembly of Clairborne.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Cross, Seelhorst Jr., Thomas, and Powell disclose in the prior art various plant supports with pivoting legs.

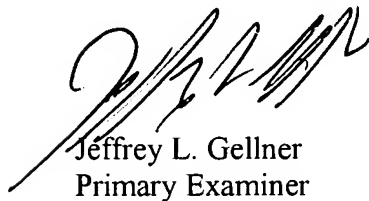
Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The official fax telephone number for the Technology Center where this application or proceeding is assigned is 703.872.9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.



Jeffrey L. Gellner
Primary Examiner